

Steps in a Land Exchange for State Trust Lands

1. Letter of Intent and Land Exchange Application received from proponent.
2. Initial Land Exchange criteria review by DNRC Area Office, and solicit public comment on the proposed exchange.
3. Area Office and Real Estate Management Bureau evaluate public comment received and how proposal meets exchange criteria.
4. Area Office and Real Estate Management Bureau make recommendation to DNRC Director to seek Land Board preliminary approval on the exchange, or disapprove the exchange.
5. Prepare Land Board Agenda Item with evaluation of proposed exchange, summary of comments received, and recommendation.
6. Land Board grants DNRC approval to complete due diligence evaluation of the exchange, or disapproves the exchange be evaluated further.
7. DNRC conducts formal due diligence including: appraisals of exchange properties, cultural/paleontological inventories of State owned lands, land title investigations, baseline inventories on the land the State would receive, water rights investigation, and mineral resource assessment as necessary.
8. Prepare a draft EA or EIS as appropriate, solicit public comment and conduct public hearings on the final exchange proposal.
9. Prepare final EA or EIS, as appropriate.
10. Final report to the Land Board, in the form of a Land Board agenda item for final approval of the exchange.
11. Land Board approves or disapproves exchange proposal and closing of the transaction.
12. DNRC prepares closing documents and closes exchange transaction.

DNRC Land Exchange Criteria

1. Equal or greater value

Land to be acquired by the state must be at least as valuable as the state land being exchanged. The starting point for this determination is the value, in terms of money, of real estate in a typical market as determined through an appraisal conducted by a real estate appraiser certified in accordance with Mont. Code Ann. § 37-54-101, et seq. The department may use information provided by the applicant or its own knowledge of affected lands and resources to estimate value for purposes of preliminary evaluation. Following review authorization by the board, a certified appraiser must be retained to estimate value as per Uniform Standards of Professional Appraisal Practices. The appraiser must consult with the department regarding the scope of work prior to conducting an appraisal.

The value of exchanged state lands must be determined by the highest and best use of the land, not simply the present use. For example, if the exchange were proposed in which the state lands were currently leased for grazing and the land was in the path of urban or commercial development, the land would be considered for valuation in the appraisal to its highest and best use for residential or commercial development rather than the present use as grazing land.

In general, trust land must be valued in two ways. First, the highest and best use of the land with discounts applied to the land for access or other limiting factors. Second, the highest and best use of the land without any discounts. The department will then arrive at a value for trust land proposed for exchange, and make a recommendation to the board. This valuation process will apply to exchanges with federal or state governmental entities at the discretion of the department.

Mont. Code Ann. 9 77-2-205 prohibits exchanges that encourage "large scale commercial, industrial, or residential development," unless the value of the resulting development is considered in determining the value of the exchanged lands. Consequently, if an exchange is proposed in which state lands classified for the production of crops will be used by an exchange applicant for commercial development, the exchanged state land is appraised considering its developed, commercial value instead of its value as agricultural land.

The department will consider intrinsic values in evaluating the relative value of lands to be exchanged. By definition, these types of values are often not reflected in the market price and are difficult to assign a dollar amount. Regardless, the department will attempt to consider such values as location, proximity to public lands, recreational opportunities, scenery, and other amenities in determining relative value.

2. State land bordering on navigable lakes and streams

According to Mont. Code Ann. § 77-2-203(2), state lands that border navigable lakes, streams, and other bodies of water with significant public use values may only be exchanged for lands that border similar bodies of water.

3. Equal or greater income to the trust

A land exchange must result in the state receiving equal or greater income to the trusts. The projected income for the lands acquired by the state will be estimated at the minimum lease rate, without speculating about possible competitive bidding. This income will be compared to the present income to the trusts of the lands to be exchanged from all leases, licenses and other sources. For purposes of comparison, the department will also consider identifiable future incomes, including income from the extraction of natural resources such as minerals and forest products. Where state lands proposed for exchange generate greater income than lands to be acquired, the applicant may design and propose a method of compensating the trusts to satisfy this criterion.

4. Equal or greater acreage

As set forth above, the Montana Constitution requires that exchanged state lands and acquired lands be, "as closely as possible, equal in area." The board interprets this language to allow the consideration of exchanges that would not result in the exchange of virtually identical acreages. For example, the board might consider receiving less acreage in return for substantially higher value or income, or both. As a general rule the board prefers to receive equal or greater acreage.

5. Consolidation of state land

The department will place priority on exchanges which result in consolidation of state lands in accordance with Mont. Code Ann. § 77-2-203. Consolidation of state land facilitates land administration and aggregated state land often has greater value and revenue potential. Similarly, an exchange should not sever a mineral estate from a surface estate.

6. Potential for long-term appreciation

The land acquired by the state should be as likely to increase in value or revenue potential as the state land exchanged. It is essential that the department and the board protect the long-term interests of the trusts. Assuming that other criteria are satisfied and no outstanding public benefits accompany the exchange, rapidly appreciating residential or recreational property will not be exchanged for agricultural land although the parcels have equivalent present value.

7. Access

A land exchange should not diminish the amount of access to state lands or other public lands. Accessible state land that is proposed for exchange should be-replaced with acquired lands-that offer similar recreational opportunities. Additionally, state lands with public access often have greater income-generating potential because uses are subject to competitive bids.